

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Commerce and Transportation, to which was referred Senate Bill No. 379, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA
- 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2005]: **Sec. 0.1. As used in this chapter,**
- 6 **"cigarette" has the meaning set forth in IC 6-7-1-2.**
- 7 SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette**
- 10 **manufacturer" means a person or an entity that does the following:**
- 11 **(1) Manufactures cigarettes.**
- 12 **(2) Does one (1) of the following:**
- 13 **(A) Participates in the Master Settlement Agreement (as**
- 14 **defined in IC 24-3-3-6) and performs the person's or**
- 15 **entity's financial obligations under the Master Settlement**
- 16 **Agreement.**
- 17 **(B) Places the applicable amount into a qualified escrow**
- 18 **fund (as defined in IC 24-3-3-7).**
- 19 **(3) Pays all applicable taxes under IC 6-7-1."**
- 20 Page 2, between lines 3 and 4, begin a new paragraph and insert:
- 21 "SECTION 6. IC 24-3-5-2 IS AMENDED TO READ AS

1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this
 2 chapter, "merchant" means a person or an entity that engages in the
 3 selling of tobacco products by delivery sale. **The term does not**
 4 **include a cigarette manufacturer.**

5 SECTION 7. IC 24-3-5-3 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this
 7 chapter, "tobacco product" has the meaning set forth in IC 7.1-6-1-3.
 8 **However, the term does not include a cigar."**

9 Page 2, line 5, strike "merchant" and insert "**cigarette**
 10 **manufacturer"**.

11 Page 2, line 6, strike "tobacco products" and insert "**cigarettes**".

12 Page 2, line 6, reset in roman "unless, before mailing".

13 Page 2, line 7, reset in roman "or shipping the".

14 Page 2, line 7, after "products," insert "**cigarettes,**".

15 Page 2, line 7, reset in roman "the".

16 Page 2, line 7, after "merchant:" insert "**cigarette manufacturer:**".

17 Page 2, reset in roman lines 8 through 16.

18 Page 2, line 17, reset in roman "(ii) purchasing".

19 Page 2, line 17, after "products" insert "**cigarettes**".

20 Page 2, line 17, reset in roman "by a person less than".

21 Page 2, reset in roman lines 18 through 19.

22 Page 2, line 20, reset in roman "(C) confirming that the".

23 Page 2, line 20, after "product" insert "**cigarette**".

24 Page 2, line 20, reset in roman "order was placed by".

25 Page 2, reset in roman lines 21 through 22.

26 Page 2, line 23, reset in roman "(E) stating the sale of".

27 Page 2, line 23, after "products" insert "**cigarettes**".

28 Page 2, line 23, reset in roman "by delivery sale is a".

29 Page 2, line 24, reset in roman "taxable event for purposes of
 30 IC 6-7-1".

31 Page 2, line 24, after "IC 6-7-1" insert ";

32 Page 2, reset in roman lines 25 through 29.

33 Page 2, line 30, before "to" begin a new paragraph and insert:

34 "SECTION 9. IC 24-3-5-4.5 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a) A merchant may not mail**
 37 **or ship tobacco products as part of a delivery sale"**.

38 Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 10. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A **merchant cigarette manufacturer** who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale without first receiving proof from the **merchant cigarette manufacturer** of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a **merchant cigarette manufacturer** that mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The ~~merchant~~ **cigarette manufacturer** shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the ~~merchant~~ **cigarette manufacturer** or the ~~merchant's~~ **cigarette manufacturer's** employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the ~~merchant~~ **cigarette manufacturer**:

(A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 11. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A ~~merchant~~ **cigarette manufacturer** shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the ~~merchant's~~ **cigarette manufacturer's** name, address, principal place of business, and each place of business in Indiana.

(b) A ~~merchant~~ **cigarette manufacturer** who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.

(2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.

1 (3) The quantity of ~~tobacco products~~ **cigarettes** that were
2 delivered to the customer.

3 (c) A ~~merchant~~ **cigarette manufacturer** who complies with 15
4 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the
5 requirements of this section.

6 SECTION 12. IC 24-3-5-7 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A ~~merchant~~
8 **cigarette manufacturer** who delivers ~~tobacco products~~ **cigarettes** to
9 a customer as part of a delivery sale shall:

10 (1) collect and pay all applicable taxes under IC 6-7-1; ~~and~~
11 ~~IC 6-7-2~~; or

12 (2) place a legible and conspicuous notice on the outside of the
13 container in which the ~~tobacco products~~ **cigarettes** are shipped.
14 The notice shall be placed on the same side of the container as the
15 address to which the container is shipped and must state the
16 following:

17 "If these ~~tobacco products~~ **cigarettes** have been shipped to you
18 from a ~~merchant~~ **cigarette manufacturer** located outside the
19 state in which you reside, the ~~merchant~~ **cigarette**
20 **manufacturer** has under federal law reported information
21 about the sale of these ~~tobacco products~~, **cigarettes**, including
22 your name and address, to your state tax collection agency.
23 You are legally responsible for all applicable unpaid state taxes
24 on these ~~tobacco products~~. **cigarettes**."

25 (b) For a violation of this section the alcohol and tobacco
26 commission may impose, in addition to any other remedies, civil
27 penalties as follows:

28 (1) If the person has one (1) judgment for a violation of this
29 section committed during a five (5) year period, a civil penalty of
30 at least one thousand dollars (\$1,000) but not more than two
31 thousand dollars (\$2,000).

32 (2) If the person has two (2) unrelated judgments for violations of
33 this section committed during a five (5) year period, a civil
34 penalty of at least two thousand five hundred dollars (\$2,500) but
35 not more than three thousand five hundred dollars (\$3,500).

36 (3) If the person has three (3) unrelated judgments for violations
37 of this section committed during a five (5) year period, a civil
38 penalty of at least four thousand dollars (\$4,000) but not more

1 than five thousand dollars (\$5,000).

2 (4) If the person has four (4) unrelated judgments for violations of
3 this section committed during a five (5) year period, a civil
4 penalty of at least five thousand five hundred dollars (\$5,500) but
5 not more than six thousand five hundred dollars (\$6,500).

6 (5) If the person has at least five (5) unrelated judgments for
7 violations of this section committed during a five (5) year period,
8 a civil penalty of ten thousand dollars (\$10,000).

9 SECTION 13. IC 24-3-5-8 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The alcohol and
11 tobacco commission may impose a civil penalty of not more one
12 thousand dollars (\$1,000) on a:

13 (1) customer who signs another person's name to a statement
14 required under ~~section 4(+)~~ **section 4(a)(1)** of this chapter; or

15 (2) ~~merchant~~ **cigarette manufacturer** who sells ~~tobacco products~~
16 **cigarettes** by delivery sale to a person less than eighteen (18)
17 years of age.

18 The alcohol and tobacco commission shall deposit amounts collected
19 under this section into the youth tobacco education and enforcement
20 fund established by IC 7.1-6-2-6."

21 Page 5, delete lines 33 through 35, begin a new paragraph and insert:

- 1 "SECTION 15. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1,
- 2 2005].".
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 379 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 10, Nays 0.

Server

Chairperson